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This cursory examination of some of the decisions affecting the question of infringement of patents will suffice to show how well the courts have succeeded in arriving at substantial justice in cases which involve the application of legal principles to a wholly new kind of facts, where the main questions are of mechanics, and in most cases, questions calling for the highest degree of mechanical skill, as well as a general knowledge of the state of the mechanical arts. Whether the present method of deciding such questions is the best possible one, seems to be somewhat doubtful, in view of the great additional labor which such cases throw upon the Supreme and Circuit Courts, and a movement has been made in the direction of establishing a court for the especial purpose of trying patent cases, with a limited appeal only to the Supreme Court. Such an arrangement would be regarded with favor by those lawyers whose business is in that line, and would unquestionably advance the speedy trial of these and other cases in the Supreme Court.

Simon G. Croswell.

BOSTON, June, 1889.

THE HISTORY OF THE REGISTER OF ORIGINAL WRITS.¹

III.

LET us pass on to a new reign. Registers of Edward I.'s time are by no means uncommon. I believe that we have at Cambridge no less than seven which, in the sense defined above, may be ascribed to that age, and there are many at the British Museum. The most meagre of them is far fuller than those Registers of Henry III.'s reign of which we have spoken. To give an idea of their size I may mention a MS. at the Museum (Egerton 656), in which the writs are distributed into groups of sixty; there are seven perfect groups followed by a group

¹ In my first article a few misprints occurred which I may be allowed to correct.

On page 99, line 20, for Henry II. read Henry III. I have not seen and hardly hope to see a MS. Register of the twelfth century. The Cottonian MS. referred to on page 110 is Julius D. II. The French words on page 111 should be *a son ascient*. The Cambridge MS. spoken of on page 113 is li. vi. 13.

which contains but fifty-one members; thus in all there are four hundred and seventy-one writs. This increase in size is of course largely due to the legislative activity of the reign, and this course makes the various specimens differ very widely from each other in detail. Still I think that I have seen enough to allow of my saying that very early in the reign the general arrangement of the Register had become the arrangement that we see in the printed book. A Register of Edward's day is distinctly recognizable as being the same book that Rastall published under the rule of Henry VIII. Not to lose myself in details about statutory writs, I will draw attention to one principle which may help towards a classification of these Edwardian Registers. That principle is expressed in the question — Does Trespass appear at all, and if so where? There are specimens which have no Trespass; there are others which have Trespass at the end, in what we may regard as an appendix; there are others again which have Trespass in its final place, namely, in the very middle of the book.

Next I will give a short description of a specimen which I am disposed to give to the earliest years of Edward I. It is contained in a Cambridge MS. (Ee. i. 1) which I will call CC, and the following notes of its contents may be enough. For the purpose of making its scheme intelligible I have supposed it to consist of various groups of writs and have given titles to those groups, but it will be understood that the MS. gives the writs in an unbroken series, a series unbroken by any headings or marks of division.

1. *The Writ of Right Group.* This includes the Writ of Right; Writ of Right *de rationabile parte*; Writ of Right of Dower; *Praeceptum in capite*; Little Writ of Right; Writs of Peace, and writs summoning the Grand Assize or Jury in lieu of Grand Assize; writ for viewing an essoinee; writs announcing appointment of attorney; *Warrantia dieti*; *Licencia surgendi*; *Pone*; *Monstraverunt*.

2. *The Ecclesiastical Group.* Writ of Right of Advowson; Darrein Presentment; *Quare impedit*; *Furis utrum*; Prohibition to Court Christian in case of an advowson; Prohibition to Court Christian in case of chattels or debts; Prohibition against Waste;¹ Prohibition in case of lay fee. Then follow seven specially worded prohibitions introduced by the note "*Ostensis formis prohibi-*

¹ The reason why Waste gets enclosed in this ecclesiastical group is obvious; the action of Waste is, or has lately been, an action on a prohibition.

cionum que sont de cursu patebit inferius de eis que sunt in suis casibus formate et sunt de precepto." After these come the *De Excommunicato capiendo* and other writs relating to excommunicates.

3. *The Replevin and Liberty Group.* Replevin; a writ directed to the coroners where the sheriff has failed in his duty is preceded by the remark "*primo inventum fuit pro Roberto de Veteri Ponte*;" *De averiis fugatis ab uno comitate in alium*; *De averiis rescussis*; *De recaptione averiorum*; *Moderata misericordia*; *De nativo habendo*, the limitation is "*post ultimum reditum Domini J. Regis avi nostri de Hibernia in Angliam*;" *De libertate probanda*; Aid to distrain villans; *De tallagio habendo*; *De homine replegiando*; *De minis*, i. e. a writ conferring a special peace on a threatened person.¹ *De odio et atia* (with the remark that the clause beginning with *nisi* was introduced by John Lexington, Chancellor of Henry III.).

4. *The Criminal Group.* Appeal of felony evoked from county court by *venire facias*; writ to attach one appealed of homicide by his body; writs to attach other appellees by gage and pledge.

5. *A Miscellaneous Group.* *De corrodio substracto*; *De balliva forrestarii de bosco recuperanda*; *Quod attachiet ipsum qui se subtraxit a custodia*; *Quod nullus implacitetur sine precepto Regis*. Various forms of the *Quod non permittat* and *Quod permittat* for suit of mill, etc.

6. *Account.* Account against a bailiff ("*Et sciendum est quod filius et heres non habebit hoc breve super ballivum domini [corr. antecessoris] sin, set ut dicitur executores possunt habere hoc breve super ballivum tempore quo fuit in obsequio defuncti*;" it proceeds to give a form of writ for executors in the king's court and then adds, "*Et hoc breve potest fieri ad placitandum in comitatu. Verumptamen casus istorum duorum brevium mere pertinet ad curiam cristanitatis ratione testamenti*").

7. *Group relating chiefly to Easements and the duties of neighbors.* Aid to knight eldest son; *De pontibus reparandis — muris — fossatis*; *De curia claudenda*; *De aqua haurienda*; *De libero tauro habendo*; *De racionabile estoverio*; *De chimino habendo*; *De*

¹ A. has complained that he is threatened by B. therefore "prefato A. de prefato B. firmam pacem nostram secundum consuetudinem Anglie habere facias, ita quod securus sis quod prefato A. de corpore suo per prefatum B." etc. It is a writ directing the sheriff to take security of the peace.

communa, with variations; Admeasurement of pasture; *Quo jure*; *De racionalibus divisis*; *De perambulacione*; *De ventre inspiciendo*.

8. *Mesne, Annuity, Debt, Detinue, etc.* *De medio*; *De annuo redditu*; *De debito* (only two writs of debt, one a *precipe*, the other a *justicies*; the former has "*debet et detinet*," the latter "*detinet*"); *Ne plegii distringantur quamdiu principalis est solvendus*; *De plegiis acquietandis*; *De catallis reddendis*; (Detinue by *precipe* and by *justicies*); *Warrantia cartae*.

9. *Writs of Customs and Services*.

10. *Covenant and Fine*. The covenant in every case is "*de uno messuagio*."

11. *Wardship*. *De custodia terre et heredis*; *De corpore heredis habendo*; *De custodia terre sine corpore*; *Aliter de soccagio*. "*Optima brevia de corpore heredis ratione concessionis reddende* [sic] *executoribus alicui defuncti*."

12. *Dower*. *Dower unde nihil*; *De dote assensu patris*; *De dote in denariis*; *De dote in Londonia*; *De amensuracione dotis*.

13. *Novel Disseisin*. Novel disseisin, the limitation is "*post primam transfretacionem domini H. Regis anni*¹ [sic] *nostri in Britanniam*"; *De redisseisina*; Assize of nuisance; Attaint.

14. *Mort d'Ancestor*, and similar actions. *Mort d'Ancestor*, (no period of limitation named); *Aiel*; *Besaiel* ("*Multi asserunt quod hoc breve precipe de avio et avia tempore domini H. Regis filii Regis Johannis per discretum virum dominum Walterium de Mertone*² *tunc secretorium clericum et prothonotorium* [sic] *cancellarie domini Regis et postmodum cancellarium primo fuit adinventum quia propter recentem seisinam et possessionem et discrimina brevis de recto vitandum ab omnibus consilariis et justiciariis domini Regis est approbatum et justiciariis demandatum quod illud secundum sui naturam placitent*"); *Cosinage*; *Nuper obiit* ("*Et hoc breve semper est de cursu ad bancum in favorem petentis seisinam quod antecessor petentium habuit de hereditate sua et similiter ut vitentur dilaciones periclose que sunt in breve de recto*.")

15. *Quare ejecit infra terminum*, ascribed to Walter of Merton;³ *Writs of Escheat*.

¹ The occurrence of this word which may be a corruption of "*avi*" is not sufficient to make us doubt that in substance this Register belongs to Edward I.'s reign; though possibly a feeble attempt to "*bring it up to date*" may have been made at a later time.

² Walter of Merton seems here to get the credit which on older evidence belongs to William of Raleigh.

³ Here again Merton seems to be obtaining undue fame at the expense of Raleigh.

16. *Entry and Formedon*. Numerous Writs of Entry, the degrees being mentioned (no writ "in the *post*"); Formedon in the Reverter; and a very general Formedon in the Descender.¹

17. *Miscellaneous Group*. License to elect an abbot; petition for such license; form of presenting an abbot elect to the King; pardons; grants of franchises; a very special writ for R. de N. impleaded in the court of W. de B.; *De languido in anno bissextili* (concerning an essoin for a year and a day in leap year); *Breve de recapcione averiorum post le Pone*; *Quod non fiat districtio per oves vel averiis* [sic] *carucarum*; *Ne aliquis faciat sectam ad comitatum ubi non tenetur*; *Ne faciat sectam curie ubi non tenetur*; some specially worded Prohibitions.

In substance this MS. seems to represent the Register as it stood in the very first years of Edward I. I do not think that any of the statutes of his reign have been taken into account, and doubt whether even the Statute of Marlborough (1267) has yet had its full effect. There is no Writ of Entry "in the *post*," and some writs about distress and suit of court founded on statutes of Henry III. still remain unassimilated in a miscellaneous appendix. The character of that appendix provokes the remark that the copyists of the Register may often have picked and chosen from among the miscellaneous forms of the Chancery those which would best suit the special wants of themselves or their employers. The *congé d'élire*, for example, looks out of place, and the petition for such a license still more out of place; but this is a monastic manuscript and these formulas were useful in the abbey.

I said above that Glanvill's scheme of the law, or rather his scheme of royal justice, might be displayed by some such string of catch words as the following: "Right" (that is proprietary right in land), "Church," "Liberty," "Dower," "Inheritance or succession," "Actions on Fines," "Lord and Tenant," "Debt," "Attorney," "Justice to be done by feudal lords and sheriffs," "Possession," "Crime." Now I will venture the suggestion that the influence of his book is apparent on the face of the Register (CC) and all the later Registers. It begins with "Right" while it puts "Possession,"

¹ "Praeceptum R. quod juste," etc., "reddat H. unam virgatam terre quam W. dedit M. et que post mortem ipsius M. ad prefatum H. descendere debet per formam donacionis quam prefatus W. inde fecit predicto M. ut dicit, et nisi fecerint," etc. What I have seen in this and other Registers favors the belief that there was a Formedon in the Descender before the Statute de Donis. See Co. Lit. 19a; Challis, Real Property, 69.

a title which now includes the Writs of Entry as well as the Assizes, at the very end. After "Right" comes "Church," and after "Church" comes "Replevin and Liberty," a title the unity of which is secured by the fact that when a man is wrongfully deprived of his liberty he ought to be replevied. The middle part of the Register is somewhat chaotic, and so it always remains; but it is really less chaotic than it may seem to some of us, whose heads are full of modern notions. We seem indeed to be carried backwards and forwards across the line which divides "personal" and "real" actions; Account, Annuity, Debt, Detinue, and Covenant are intermixed with actions founded on feudal dues and actions founded on easements, writs for suit of mill, suit of court, repair of bridges, actions of Mesne, actions of Customs and Services. The truth, as it seems to me, is that the line between "real" and "personal" actions as drawn in later books, is, at least when applied to our medieval law, a very arbitrary line. For example, there is an important connection between an action in which a surety sues the principal debtor (*de plegio acquietando*) and an action of Mesne, in which the tenant in demesne sues the intermediate lord to acquit or indemnify him from the exaction of the superior lord; this connection we miss if we stigmatize "Mesne" as a "real action" just because it has something to do with land. The action of Debt, again, is founded on a *debet*; but so is the action for Customs and Services, at least in some of its forms. However I am not concerned to defend the Register.

In Edward I.'s day, partly it may be under the influence of Glanvill's book, it has become an articulate body. It will never hereafter undergo any great change of form, but it will gradually work new matter into itself. Such new matter will for a while lie undigested in miscellaneous appendixes, but in course of time it will become an organic part of the system. I will mention the most striking illustration of this process.

Hitherto we have never come across that action of Trespass which is to be all important in later days, and it seems to me a very noteworthy fact that there are Registers of Edward I.'s day that omit this topic. It gradually intrudes itself. First we find it occupying a humble place at the end of the collection among a number of new writs due to Edward's legislative zeal. Thus, to choose a good example, there is in the Cambridge Library a MS. (Ll. iv. 18) containing a Register which is very like that (Ee. i. 1.)

which we have last described. But when it has done with the Writs of Entry, it turns to Formedon, gives writs in the Reverter, Descender, and Remainder, and a number of specially worded writs of Formedon which bear the names of the persons for whom they were drawn:—we have Bereford's formedon, Mulcoster's, and Mulgrave's; clearly the Statute of Westminster II. is in full operation. Then upon the heels of Formedon treads Trespass. It is a simple matter as yet, can be represented by one writ capable of a few variations—*insultum fecit et verberavit, catalla cepit et asportavit, arbores crescentes succidit et asportavit, blada messuit et asportavit, separalem pasturam pastus fuit, uxorem rapuit et cum catallis abduxit*. Trespass disposed of, we have Ravishment of Ward; *Contra formam feffamenti*; *Ne quis destringatur per averia carucae*; Contribution to suit of court; Pardons; Protections; *De coronatore eligendo*; *De gaola deliberanda*; *De deceptione curiæ*; *cessavit per biennium*; *carta per quam patria de Ridal disafforestatur*; *Breve de compoto super Statutum de Acton Burnell*, and so forth and so forth, in copious disorder. The whole *Registrum* fills fifty-two folios, of which no less than the last fourteen are taken up by the unsystematized appendix. Another MS. (Ll. iv. 17) gives a Register of nearly the same date, perhaps of somewhat earlier date, for it does not contain the new Formedons. This again has an unsystematized appendix, and in that appendix Trespass is found. The place at which it occurs may be thus described:—the part of the Register that has already become crystallized, the part which ends with the Writs of Entry, having been given, we have the following matters: Pardon; License to hunt; Grants of warren, fair, market; *De non ponendo in assisam*, Writ on the Statute of Winchester; Leap year; Inquests touching the King's year and day; Contribution; Beau pleader; Trespass; Gaol Delivery; Intrusion; *congé d'élire*; *Quo Warranto*; Trespass again; Writ on the Statute of Gloucester; Mortmain; Trespass again (*pro cane interfecto*); *ne clerici Regis compellantur ad ordines suscipiendos*,—as variegated a mass as one could wish to see. Other MSS. of the same period have other appendixes with Trespass in them. They forcibly suggest that the Register was falling into disorder, the yet inorganic part threatening to outweigh the organic.

There came a Chancellor, a Master, a Cursitor with organizing power; Trespass could no longer be treated as a new action; a

place had to be found for it, and a place was found. It may be that this was done under Edward I. ; certainly in his son's reign it seems an accomplished fact. What was the place for Trespass? If the reader will look back at our account of the Register which we have called CC, he will find that we have labelled the third group of writs as "Replevin and Liberty," the fourth group as "Criminal." The connection between Replevin and Liberty is obvious, it is seen in the writ *De homine replegiando*, the writ for replevying a prisoner. The transition from Liberty to Crime is meditated by the writ *De odio et atia*, a writ for one who says that he is imprisoned on a false accusation of crime. Now when the time had come for taking up Trespass into the organic part of the Register, this was the quarter in which its logical home might be found. It was naturally brought into close connection with "crime." Throughout the Middle Ages, Trespass is regarded as a crime; throughout the Year Books the trespasser is "punished;" and it is a very plausible opinion that the earliest actions of trespass grew out of appeals of felony; they were, so to speak, mitigated appeals, appeals with the "*in feloniam*" omitted, but with the "*vi et armis*," and the "*contra pacem*" carefully retained. Already in the Register that I have called CB, a writ of false imprisonment has come in immediately before the writ for attaching an appellee. Then, in CC, a writ *De minis* has forced its way into the "Replevin and Liberty Group" so as to precede the writs against an appellee. This writ *De minis*, commanding the sheriff to confer the king's peace, the king's "grith" or "mund" we may say, on a threatened person, and to make the threatener find security for the peace is the herald of Trespass: *De minis*—*De transgressionem*, this becomes a part of our "*legalis ordo*."

The result in the fully developed Register is curious, showing us that the arrangement of the book is the resultant of many forces. Let us see what follows Waste. We have the *De homine replegiando*, then the Replevin of chattels, then, returning to men deprived of liberty, the *De nativo habendo* and the *De libertate probanda*; these naturally lead to the writ ordering the sheriff to aid a lord in distraining his villans. There follows the *De scutagio habendo*. Why should this come here? Because in older times villanage had suggested tallage; this had been the place for a *De tallagio habendo*, and then tallage had suggested scutage.

Then in the printed Register we have the *De minis*; and then an action against one who has given security for the peace and has broken it by an assault, brings upon us the whole subject of Trespass, which with its satellites now fills some forty folios, some eighty pages. And then what comes next? Why *De odio et atia*; we are back again at that topic of "Liberty and Replevin" whence we made this long digression. Meanwhile these criminal writs, these writs for attaching appellees which originally attracted Trespass to their quarter of the Register, have disappeared as antiquated, since persons accused of felony now get arrested without the need of original writs.

Similar measures were taken for writing into appropriate places the result of the legislation of Edward I.; but the formation of new writs was constantly providing fresh materials. Some of these found a final resting-place at the very end of the Register, but for most of the statutory writs, a home was found in the middle. The occurrence of the Assize of Novel Disseisin marked the beginning of a new and logically arranged section of the work, a section devoted to Possession. It is between Dower and Novel Disseisin that the newer statutory writs are stored.

As already said, the printed Register is full of notes and queries. Many of these are ancient, some as old as the reign of Edward I. Speaking broadly one may say that the Latin notes are ancient, the French notes comparatively modern. Some of them must have been quite obsolete in the reign of Henry VIII.; but the "*vis inertiae*" preserved them. When once they had got into MSS. they were mechanically copied.

During the whole of the fourteenth century the Register went on growing, and by the aid of MSS. we can still catch it in several stages of its growth. Some of these MSS. show a Register divided into chapters, and thus make it possible for us to perceive the articulation of the book. As the printed volume gives us no similar aid, I will here set out the scheme of a Register which I attribute to the reign of Richard II. It is contained in a Cambridge MS. (Ff. v. 5). In the right-hand column I give the catch-words of its various chapters; in the left-hand column I refer to what I take to be the scheme of CC, the Register from the beginning of Edward I.'s reign, of which mention has already been made.

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|---|---|
| 1. The Writ of Right Group. | i. <i>De recto.</i> |
| | ii. <i>De recto secundum consuetudinem manerii.</i> |
| | iii. <i>De falso iudicio.</i> |
| | iv. <i>De attornato generali; Protectiones.</i> |
| | v. <i>De attornatis faciendis.</i> |
| 2. The Ecclesiastical Group, including Waste. | vi. <i>De advocacione; De ultima presentacione; Quare impedit; juris utrum.</i> |
| | vii. <i>De prohibitione.</i> |
| | viii. <i>Consultationes.</i> |
| | ix. <i>De non residentia; De vi laica ammovenda, etc.</i> |
| | x. ^(a) <i>Ad jura regia.</i> |
| | xi. <i>De excommunicato capi-endo, etc.</i> |
| | xii. <i>De vasto.</i> |
| 3. Replevin and Liberty Group. | xiii. Replevin generally and <i>De homine replegiando.</i> |
| | xiv. Trespass and Deceit (<i>transgressio in deceptione</i>). |
| | xv. ^(b) Error. |
| [4. Criminal Group dissolved.] | xvi. <i>Conspiratio; De odio et atia.</i> |
| 5. [Miscellaneous Group. See cap. xix]. | |
| 6. Account. | xvii. Account. |
| | xviii. Debt and Detinue. |
| 7. Easements, Neighborly Duties, etc. | xix. <i>Secta ad molendinum; curia claudenda; Quod permittat, etc.; Quo jure; Admeasurement of pasture; Perambulation; Warrantia cartae; De plegiis acquietandis.</i> |

(a) A group of especially stringent prohibitions called out by papal and ecclesiastical aggression.

(b) The topic of Error is suggested by Trespass, just as the topic of False Judgment is suggested by "Right."

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| 8. Mesne, Annuity, Debt, Detinue. | xx. Annuity; Customs and Services; Detinue of Charters; Mesne. |
| 9. Customs and Services. | |
| 10. Covenant and Fine. ^(a) | xxi. Covenant. |
| 11. Wardship. | xxii. Wardship. |
| 12. Dower. | xxiii. Dower. |
| | xxiv. ^(b) <i>Brevia de Statuto</i> (Modern Statutory Actions). |
| | xxv. <i>De ordinatione contra servientes</i> (Actions on the Statute of Laborers). |
| 13. Novel Disseisin. | xxvi. Novel Disseisin. |
| | xxvii. <i>De recordo et processu mittendo</i> (Writs ancillary to the Assizes). |
| 14. Mort d'Ancestor, and similar writs. | xxviii. Mort d'Ancestor. |
| | xxix. Aiel, Besaiel, <i>Nu p e r Obiit</i> , etc. |
| 15. <i>Quare ejecit</i> . | xxx. <i>Quare ejecit; De ejectione firmæ</i> . |
| 16. Entry. | xxxi. Entry <i>ad terminum qui preteriit</i> . |
| | xxxii. Entry, <i>Cui in vita</i> . |
| | xxxiii. Intrusion. |
| | xxxiv. Entry for tenant in dower. |
| | xxxv. Cessavit. |
| | xxxvi. Formedon. |
| | xxxvii. <i>De tenementis legatis</i> . |
| 17. Miscellaneous group. | xxxviii. ^(c) <i>Ad quod damnum</i> . |
| | xxxix. <i>De essendo quieto de theolonio</i> . |
| | xl. <i>De libertatibus allocandis</i> . |
| | xli. <i>De corrodio habendo</i> . |
| | xlii. <i>De inquirendo de idiota; De leproso amovendo</i> , etc. |

(a) The action on a fine by original writ has disappeared, because fines are now enforced by *Scire Facias*. This is noted in the printed Register, f. 169.

(b) Here come two chapters of statutory appendix.

(c) Here begins a long appendix, consisting mainly of documents that may be called administrative.

- xliii. Presentations by the king,
etc.
- xliv. *De manucaptione et
supersedendo.*
- xlvi. *De profero faciendo;
De mensuris et ponderibus.*
- xlv. *De carta perdonacionis
se defendendo.*
- Appendix. *De indemptitate nominis.* Statutory writs;
Decies tantum, etc.

A Register from the end of the fourteenth century is in point of form the Register that was printed in Henry VIII.'s day. If I might revert to my architectural simile, I should say that the cathedral as it stood at the end of Richard II.'s reign was the cathedral in its final form; some excrescent chantry chapels were yet to be built, but the church was a finished church and was the church that we now see. In the printed book we can detect but very few signs of work done under Tudor or even under Yorkist kings, and though the Lancastrian Henries have left their mark upon it, still that mark is not conspicuous. I should guess that the last occasion on which any one went through the book with the object of adding new writs and new notes occurred late in the reign of Henry VI.¹ On the other hand we constantly find references to decisions of Richard II.'s time, and there are many signs that the book was revised and considerably enlarged in the middle of Edward III.'s reign; allusions to decisions given between the tenth and twentieth years of the last-named king are particularly frequent, and we read more of Parning than of any other chancellor. This is a curious point. Robert Parning, as is well known, was one of the very few laymen, one of the very few common lawyers, who during the whole course of medieval history held the great seal. He held it for less than two years; he became chancellor in October, 1341, and died in August, 1343; yet during this short period, he stamped his mark upon the Register. The policy of having a layman (a "layman," that is, when regarded from the ecclesiastical not the legal point of view) as chancellor was very

¹ Reg. Brev. Orig. f. 12, 31, 58, 288, 289 b, 291, 308, show work of Henry VI.'s reign.

soon abandoned; few if any laymen were endowed with the statecraft and miscellaneous accomplishments required of one who was to act as "principal secretary of state for all departments." But within the purely legal sphere, as manager of the "*officina brevium*," a great lawyer who had already been chief justice may have found congenial work. After all, however, it may be chance that has preserved his name in the pages of the Register; just in his day some clerk may have been renovating and recasting the old materials and thus have done for him what some other clerk a century earlier did for William Raleigh.

During the fifteenth century the Register increased in bulk, but except in one department there seem to have been but few additions made to the formulas of litigation; the matter that was added consisted, if I mistake not, very largely of documents of an administrative kind,—pardons, licenses to elect and other licenses, letters presenting a clerk for admission, writs relating to the management of the king's estates, writs for putting the king's wards in seisin, and so forth, lengthy formulas which conceal what I take to be the real structure of the Register. As a final result we get some seven hundred large pages, whereas we started in Henry III.'s day with some fifty or sixty writs capable of filling some ten or twelve pages. The department just mentioned as exceptional is of course the department of Trespass. Here there has been rapid growth; but I do not think that the printed book can be taken as fairly representing the law of the time when it was printed, namely 1531. It draws no line at all between "Trespass" and "Case." The writs that we call writs of "Trespass upon the special Case" are mixed up with the writs which charge assault, asportation, and breach of close, and are very few. Writs making any mention of *assumpsit* are fewer still, and I think that there is but one which makes the non-feasance of an *assumpsit* a ground of action.¹ I should suppose that the practice of bringing actions by bill without original writ checked the accumulation of new precedents in the Chancery, and it seems an indubitable fact that the invention of printing had some evil as well as many good results; men no longer preserved and copied and glossed and recast the old manuscripts. But when all is said it is a remarkable thing that a Register which certainly did not contain the latest

¹ Reg. Brev. Orig. f. 109 b, a writ against one who has "assumed" to erect a stone cross and has not done it.

devices should have been printed in 1531, reprinted in 1595, and again reprinted in 1687. The consequence is that Trespass to the last appears as an intruder. No endeavor has been made to reduce the writs that come under that head to logical order. The forces which have determined the sequence of these writs seem chiefly those which I have called "chronology" and "mechanical chance;" as new writs, as they were made, were copied on convenient margins and inviting blank pages. There has been no generalization; the imaginary defendant is charged in different precedents with every kind of unlawful force, with the breach of every imaginable boundary, with the asportation of all that is asportable, while the now well-known writs against the shoeing smith who lames the horse, the hirer who rides the horse to death, the unskilful surgeon, the careless innkeeper, creep in slowly amid the writs which describe wilful and malicious mischief, how a cat was put into a dove-cote, how a rural dean was made to ride face to tail, and other ingenious sports. It would be interesting could we bring these Registers to our aid in studying the process whereby Trespass threw out the great branch of Case, and Case the great branch of Assumpsit; but the task would be long and very difficult, because the Registers are so many, and unless we compare all of them our means of fixing their dates are few and fallible. Of course, if the task concerned the history of Roman Law it would be performed; but we are all fully persuaded, at least on this side of the Atlantic, that our own forefathers were not scientific.

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